



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicant:	Wayne J. Carr	§	Art Unit:	2611
		§		
Serial No.:	09/321,939	§	Examiner:	Jason P. Salce
		§		
Filed:	May 28, 1999	§		
		§		
Title:	Communicating Ancillary	§	Docket No.	ITL.0208US
	Information Associated	§		(P7014)
	with a Plurality of	§		
	Audio/Video Programs	§		

Mail Stop **Appeal Brief-Patents**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RECEIVED
OCT 13 2004
Technology Center 2600

APPEAL BRIEF

10/08/2004 MMEKONEN 00000019 09321939

01 FC:1402

340.00 OP

Date of Deposit: October 4, 2004

I hereby certify under 37 CFR 1.8(a) that this correspondence is being deposited with the United States Postal Service as **first class mail** with sufficient postage on the date indicated above and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Janice Munoz
Janice Munoz

TABLE OF CONTENTS

REAL PARTY IN INTEREST	3
RELATED APPEALS AND INTERFERENCES.....	4
STATUS OF CLAIMS	5
STATUS OF AMENDMENTS	6
SUMMARY OF CLAIMED SUBJECT MATTER	7
GROUND OF REJECTION TO BE REVIEWED ON APPEAL	14
ARGUMENT	15
CONCLUSION.....	25
CLAIMS APPENDIX.....	26
EVIDENCE APPENDIX.....	None
RELATED PROCEEDINGS APPENDIX.....	None

REAL PARTY IN INTEREST

The real party in interest is Intel Corporation, the assignee of the present application by virtue of the assignment recorded at reel/frame, 010008/0218.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

STATUS OF CLAIMS

Claims 1-18 and 24-29 have been finally rejected under 35 U.S.C. § 103(a) and are the subject of this appeal.

STATUS OF AMENDMENTS

There are no unentered amendments.

SUMMARY OF CLAIMED SUBJECT MATTER

At this point, no issue has been raised that would suggest that the words in the claims have any meaning other than their ordinary meanings. Nothing in this section should be taken as an indication that any claim term has a meaning other than its ordinary meaning.

The method of independent claim 1 includes communicating television content and enhancement data including announcements. The method includes receiving the television content that is associated with multiple television channels over a transport medium. The method includes receiving enhancement data that is associated with the multiple television channels that have been multiplexed onto a separate delivery mechanism. The announcements in the enhancement data are expected at a first location. The method includes indicating at least some of the enhancement data is being transmitted. The method further includes receiving one or more special indications that the first location that indicate that enhancement data is available on the separate delivery mechanism. The special indication(s) identifies locations of the announcements that are associated with the multiple television channels. The method includes determining a location of an announcement based on a special indication associated with a currently tuned television channel and processing the announcement of the currently tuned television channel.

The specification describes a particular embodiment of claim 1, although other embodiments are within the scope of this claim. The specification describes that conventionally, ATVEF announcements arrive at an expected location, such as a predetermined Internet Protocol (IP) address and port. The Internet protocol is described in RFC 791, entitled "Internet Protocol," dated September 1981. The locations of the resource and trigger streams specified in the ATVEF Specification may be described as IP addresses and ports where the resources and

triggers may be found. The ATVEF announcement may be a Session Description Protocol (SDP) announcement, as described in RFC 2327, entitled “SDP: Session Description Protocol,” dated April 1998. Specification, p. 6.

In current ATVEF systems, the enhancement data including announcements are delivered with the A/V content associated with each TV channel. However, announcements for multiple TV channels are not grouped for arrival at the ATVEF announcement IP address and port in the receivers 16, as the one or more announcements of the currently tuned TV channel are received at the ATVEF announcement IP address and port along with the A/V content stream of the currently tuned TV channel. Thus, conventionally, when tuning from one TV channel to another, the receiver assumes that the source of the data network changes correspondingly, that is, only announcements for the currently tuned TV channel flow on the announcement IP address and port. For example, when a receiver is tuned to channel B, the enhancement data of channel B is received at the announcement IP address and port but not enhancement data associated with other channels. According to the current ATVEF Specification, ATVEF announcements for channels other than the currently tuned channel cannot arrive in the ATVEF announcement IP address and port. The enhancement data is thus tightly coupled to the A/V content associated with each TV channel so that the receiver can easily associate the enhancement data with the A/V content of the currently tuned TV channel in a conventional ATVEF system. Specification, p. 6.

To provide for greater flexibility and/or to alleviate bandwidth concerns of the transport medium 22, some embodiments of the invention transmit (using IP multicast) enhancement data associated with multiple A/V channels (e.g., TV channels) over a link that is separate from the transport medium used to transmit A/V content (or, alternatively, that is part of the same delivery

mechanism as the A/V content but is not associated with any A/V channel, e.g., an MPEG-2 transport stream with ancillary information in a data-only program separate from the A/V programs). The separate delivery mechanism to deliver the A/V content may be a separate transport stream or a separate link 20 such as a general purpose data link or some other type of communications link. Thus, according to some embodiments, enhancement data is separated from the A/V data at the transport operator system 14 (or alternatively, at another source), with the A/V content transmitted over the transport medium 22 and the enhancement data transmitted over the secondary link 20 (or a separate transport stream). Specification, pp. 6-7.

Thus, generally, tuning to an A/V program may include tuning to A/V channels (e.g., TV channels), to transport stream programs (e.g., in an MPEG based system), or to other separations or segments of A/V content. Also, associating ancillary information with an A/V program can thus refer to associating ancillary information with an A/V channel, a transport stream program, or other A/V separations or segments. Specification, p. 7.

In accordance with some embodiments, the enhancement data associated with multiple A/V channels may be grouped and stored in the transport operator system 14 and/or the one or more servers 18 and multiplexed into a transmission stream on the secondary link 20. Consequently, according to some embodiments, enhancement data associated with multiple A/V channels may be combined into a transmission stream on the secondary link 20. At the receiving end, the combined stream of enhancement data is separated and associated with a currently tuned A/V channel. Specification, p. 7.

In accordance with some embodiments, indications (referred to as special announcements) may be transmitted over the secondary link 20 along with the enhancement data to aid in the association of enhancement data with the tuned channel. In a conventional ATVEF

system, such special announcements are not employed because enhancement data is tightly coupled with the A/V content. Upon receipt of the special announcements, each receiver 16 determines the A/V channel that the receiver is tuned to and identifies the special announcement associated with the tuned channel. The special announcement includes data identifying locations of one or more ATVEF announcements associated with that A/V channel. At the receiving end, instead of ATVEF announcements arriving at the expected location (e.g., predetermined IP address and port), the special announcements arrive at the expected location. Using information in a special announcement, each receiver 16 can then locate the one or more ATVEF announcements received over the secondary link 20 and associate them with the tuned channel. From the retrieved ATVEF announcements, locations of resource files and triggers can then be conventionally determined for retrieval and presentation. The resource files of the enhancement data can then be combined with the A/V content for presentation (audio or video presentation or both). Specification, pp. 7-8.

Thus, effectively, some embodiments of the invention separate A/V content and enhancement data at the source (e.g., the transport operator system 14). The A/V content is transmitted over the transport medium 22, while the enhancement data (along with special announcements) associated with multiple A/V channels are combined and multiplexed onto a separate transmission stream. At the receiving end (e.g., receivers 16), the combined enhancement data are separated (demultiplexed) and associated with a currently tuned A/V channel. Specification, p. 8.

The system of independent claim 8 is capable of communicating audio/video content. The system includes a receiver that is adapted to tune to an audio/video portion over a transport medium, a device and a controller. The device is adapted to receive announcement data that is

associated with the tuned audio/video content directed to a first location and to receive a special announcement directed to the first location. The specific announcement indicates availability of the announcement data that is associated with the tuned audio/video program and the announcement data that is associated with the tuned audio/video content indicating enhancement data is being transmitted. The controller is adapted to redirect the announcement data to a second location in response to the special announcement.

A specific embodiment (although other embodiments are possible) of independent claim 8 is set forth in the specification. This embodiment includes a receiver circuit 114, such as a TV tuner card, may be adapted to receive content over the transport medium 22 and a transceiver 116 is adapted to communicate over the secondary link 20. The receiving circuit 114 may be associated with an A/V device driver routine 130 that forwards the received A/V content to application software adapted to process and present the A/V content in the receiving system. The transceiver 116 may be associated with a network device driver 132 to receive enhancement data from the link 20. Specification, p. 10.

In one embodiment, the network device driver 132 may send received data to a TCP/IP (Transmission Control Protocol/Internet Protocol) stack 134. TCP is described in RFC 793, entitled "Transmission Control Protocol," dated September 1991. Data flows through the TCP/IP stack 134 to application software, including an enhancement routine 138 for receiving and processing enhancement data and a special announcement routine (SA routine) 136 to receive and process special announcements. In an alternative arrangement, the SA routine 136 may be part of the enhancement routine 138. The application routines, device drivers, and other routines or programs may be executable on a controller 120. Such routines or programs may be initially stored in a storage medium 118 and loaded by the controller 120 for execution. The SA

routine 136 is capable of associating enhancement data received over the secondary link 20 to the currently tuned A/V channel. The SA routine 136 may then combine the associated enhancement data with the A/V content of the currently tuned TV channel for presentation. Alternatively, the enhancement data and special announcements may arrive in a separate transport stream program (e.g., such as those in MPEG based systems) over the transport medium 22, in which case it may be different parts of the SA routine 136 (or different routines) that process receipt of the enhancement data and A/V content. Specification, pp. 10-11.

The method of independent claim 10 includes receiving audio/video programs over a transport medium; and receiving a plurality of ancillary information streams associated with the plurality of audio/video programs over a separate delivery mechanism. Announcements in the ancillary information streams are expected at a first location and indicate enhancement data as being transmitted. A predetermined indication is received at the first location. The method includes tuning to one of the audio/video programs and identifying a location of the announcement of an ancillary information stream that is associated with the tuned audio/video program based on the predetermined location.

Embodiments of the method that is set forth in independent claim 10 are described in the specification, as discussed above for claims 1 and 8.

The method of independent claim 11 includes transmitting audio/video content over a transport medium and multiplexing enhancement data that includes announcements associated with multiple audio/video programs for transmission over a separate delivery mechanism. The announcements indicate at least some of the enhancement data is being transmitted. The method includes transmitting a predetermined indication over the separate delivery mechanism to a first location in which the announcements in the announcement data are expected. The predetermined

indication is associated with one of the audio/video programs and identifies a location other than the first of one or more announcements that are associated with the one audio/video program.

Embodiments of claim 11 are described in the specification, as discussed above for claims 1 and 8.

The system of independent claim 15 includes a first device that is adapted to receive audio/video content associated with a plurality of audio/video programs over a transport medium. The system includes a second device that is adapted to receive one or more special indicators and a stream of ancillary information portions that are associated with a plurality of audio/video programs over the separate delivery mechanism. The system includes a controller that is adapted to locate one or more ancillary information portions that are associated with the tuned audio/video program based on information in a special indicator that is identified with the tuned audio/video program. The ancillary information portions include announcements, and the special indicators include data that identifies locations of the one or more announcements. The announcements indicate that enhancement data is being transmitted.

Embodiments of independent claim 15 are described in the specification, as discussed above for claims 1 and 8.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

- A. Can claims 1-7, 11-14, 24, 25 and 28 be rendered obvious under 35 U.S.C. § 103(a) as being unpatentable over Matthews, Freeman and the ATVEF Specification when the Examiner has failed to establish a *prima facie* case of obviousness?**
- 1. Can claims 1-7, 24 and 25 be rendered obvious when the Examiner has failed to establish a *prima facie* case of obviousness for independent claim 1?**
 - 2. Can claims 11-14 and 28 be rendered obvious when the Examiner has failed to establish a *prima facie* case of obviousness for independent claim 11?**
- B. Can claims 10, 15-18, 27 and 29 be rendered obvious under 35 U.S.C. § 103(a) as being unpatentable over Matthews and the ATVEF Specification when the Examiner has failed to establish a *prima facie* case of obviousness?**
- 1. Can claims 10 and 27 be rendered obvious when the Examiner has failed to establish a *prima facie* case of obviousness for independent claim 10?**
 - 2. Can claims 15-18 and 29 be rendered obvious when the Examiner has failed to establish a *prima facie* case of obviousness for independent claim 15?**
- C. Can claims 8, 9 and 26 be rendered obvious under 35 U.S.C. § 103(a) as being unpatentable over Matthews in view of Smith and the ATVEF specification when the Examiner has failed to establish a *prima facie* case of obviousness for independent claim 8?**

ARGUMENT

A. Can claims 1-7, 11-14, 24, 25 and 28 be rendered obvious under 35 U.S.C. § 103(a) as being unpatentable over Matthews, Freeman and the ATVEF Specification when the Examiner has failed to establish a *prima facie* case of obviousness?

The Examiner rejects claims 1-7, 11-14, 24, 25 and 28 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,025,837 (herein called "Matthews") in view of U.S. Patent No. 6,181,334 (herein called "Freeman") and the Advanced Television Enhancement Forum specification (herein called the "ATVEF specification"). Matthews generally discloses an electronic program guide that has hyperlinks to target resources. Freeman generally discloses an interactive cable television system. The ATVEF specification describes a standard for delivering interactive television content. Independent claims 1 and 11 overcome the § 103(a) rejections and thus, the claims that depend therefrom overcome the § 103 rejections, for at least the reasons that are set forth below.

1. Can claims 1-7, 24 and 25 be rendered obvious when the Examiner has failed to establish a *prima facie* case of obviousness for independent claim 1?

The method of independent claim 1 includes communicating television content and enhancement data including announcements. The method includes receiving the television content that is associated with multiple television channels over a transport medium. The method includes receiving enhancement data that is associated with the multiple television channels that have been multiplexed onto a separate delivery mechanism. The announcements in the enhancement data are expected at a first location. The method includes indicating at least some of the enhancement data is being transmitted. The method further includes receiving one or more special indications that the first location that indicate that enhancement data is available on the separate delivery mechanism. The special indication(s) identifies locations of the

announcements that are associated with the multiple television channels. The method includes determining a location of an announcement based on a special indication associated with a currently tuned television channel and processing the announcement of the currently tuned television channel.

In the § 103 rejection of independent claim 1, the Examiner contends that the hyperlinks of Matthews allegedly teaches or suggests the announcements of independent claim 1. Final Office Action, 6. The Examiner also labels an icon 180 (see Fig. 7, for example) of an exemplary program guide of Matthews as the alleged "special indication" of independent claim 1. Final Office Action, 2 p. 6-7. The Examiner concedes that neither Freeman nor Matthews disclose indicating at least some of the enhancement data as being transmitted. Office Action, 8. In other words, independent claim 1 recites that the announcements indicate at least some of the enhancement data is being transmitted. Therefore, for purposes of showing these limitations, the Examiner sets forth the hypothetical combination of Matthews and Freeman with the ATVEF specification. *Id.*

A *prima facie* case of obviousness requires more than just a piecewise combination of elements from a hypothetical combination of references. Instead, a *prima facie* case of obviousness requires that the Examiner shows that one skilled in the art, *without knowledge of the claimed invention*, would have combined or modified the cited references to derive the claimed invention (*emphasis added*). M.P.E.P. § 2143.

Instead of showing were the prior art contains the alleged suggestion or motivation for the combination of Freeman, Matthews and the ATVEF specification to derive the claimed invention, the Examiner instead combines these references in hindsight to improperly reject independent claim 1. More specifically, in order to modify Matthews in view of the ATVEF

specification to derive the claimed invention, the hyperlinks of Matthew must indicate that enhancement data is being transmitted. Thus, the Examiner must show a suggestion or motivation in the art to modify Matthews' hyperlink to somehow indicate that enhancement data is being communicated.

The Examiner concedes that the alleged suggestion or motivation does not occur in Matthews or Freeman. Otherwise, the ATVEF specification would not be needed. On the other hand, the ATVEF specification describes announcements that are used to announce currently available programming to the receiver. ATVEF specification, p. 5. As set forth in the ATVEF specification, announcements have a time period for which they are valid and indicate the multicast address and port number that the client can listen in on to receive content of the enhancement and triggers. There is no reasoning or citations to the prior art set forth by the Examiner, probative of why one skilled in the would apply the announcements set forth in the ATVEF specification to hyperlinks, or hypertext, that is disclosed in Matthews.

Furthermore, the Examiner fails to show where the icon 180 (Fig. 7) of Matthews allegedly identifies locations of announcements (i.e., plural) that are associated with multiple television channels. In this manner, there is no teaching in Matthews that the icon 180 identifies locations of multiple hyperlinks.

Thus, the "announcements" that are described in the ATVEF specification are entirely different "announcements" than the hypertext links (i.e., the alleged announcements) disclosed in Matthews. Therefore, one skilled in the art, without knowledge of the claimed invention, would not have been motivation to use the hyperlinks indicate that enhancement data is being received. Without such a suggestion or motivation, a *prima facie* case of obviousness has not been established for independent claim 1.

Claims 2-7, 24 and 25 are patentable and overcome the § 103(a) rejections for at least the reason that these claims depend from an allowable independent claim.

Thus, for at least the reasons that are set forth above, the § 103(a) rejections of claims 1-7, 24 and 25 are improper and should be reversed.

2. Can claims 11-14 and 28 be rendered obvious when the Examiner has failed to establish a *prima facie* case of obviousness for independent claim 11?

The method of independent claim 11 includes transmitting audio/video content over a transport medium and multiplexing enhancement data that includes announcements associated with multiple audio/video programs for transmission over a separate delivery mechanism. The announcements indicate at least some of the enhancement data is being transmitted. The method includes transmitting a predetermined indication over the separate delivery mechanism to a first location in which the announcements in the announcement data are expected. The predetermined indication is associated with one of the audio/video programs and identifies a location other than the first of one or more announcements that are associated with the one audio/video program.

The Examiner fails to establish a *prima facie* case of obviousness for claim 11 for at least the reason that the Examiner fails to show where the prior art contains the alleged suggestion or motivation for the combination of Matthews, Freeman and the ATVEF specification to derive the claimed invention. More specifically, independent claim 11 recites that at least some of the announcements indicate at least some of the enhancement data is being transmitted. Although the Examiner assigns the arbitrary label "announcement" to a hypertext link in Matthews and refers to the ATVEF specification's discussion of announcements, there is no suggestion or motivation in any of these references to modify Matthews so that Matthews' hypertext link somehow indicate that enhance data is being transmitted. Rather, the announcements disclosed

in the ATVEF specification serve an entirely different purpose from hypertext links, namely, announcing the arrival of enhancement data and indicating trigger and content information for enhancement data. This is entirely different from the function that a hypertext link serves. In short, the Examiner has arbitrarily chosen elements from various references and combined them to derive the claimed invention without showing where the prior art contains the alleged suggestion or motivation for this combination. Therefore, for at least this reason, the Examiner fails to establish a *prima facie* case of obviousness for independent claim 11.

The Examiner fails to establish a *prima facie* case of obviousness for independent claim 11 for at least the additional, independent reason that the Examiner fails to show where the prior art teaches or suggests the transmitting of independent claim 11. More specifically, claim 11 recites transmitting a predetermined indication. This predetermined indication is associated with an audio/video program and identifies a location other than a first location (a location at which announcements in the enhancement data are expected) of one or more announcements that are associated with the audio/video program.

Thus, the Examiner fails to show where the hypothetical combination of Freeman, Matthews and the ATVEF specification teaches or suggests the transmission of a special indication that identifies a location other than a first location of one or more announcements that are associated with an audio/video program. Instead, it is clear from Matthews that all of the alleged announcements (i.e., hypertext links) are received at the same location. There is no redirection, as set forth in the specific language of claim 11. Therefore, for at least this additional, independent reason, a *prima facie* case of obviousness has not been set forth independent claim 11.

Claims 12-14 and 28 are patentable and overcome the § 103(a) rejections for at least the reason that these claims depend from an allowable independent claim.

Thus, for at least the reasons that are set forth above, the § 103(a) rejections of claims 11-14 and 28 are in error and should be reversed.

B. Can claims 10, 15-18, 27 and 29 be rendered obvious under 35 U.S.C. § 103(a) as being unpatentable over Matthews and the ATVEF Specification when the Examiner has failed to establish a *prima facie* case of obviousness?

The Examiner rejects claims 10, 15-18, 27 and 29 under 35 U.S.C. § 103(a) as being unpatentable over Matthews in view of the ATVEF specification. Applicant submits that these rejections are overcome for at least the reason that the Examiner fails to establish a *prima facie* case of obviousness for either independent claim 10 or 15 for at least the reasons that are set forth below.

1. Can claims 10 and 27 be rendered obvious when the Examiner has failed to establish a *prima facie* case of obviousness for independent claim 10?

The method of independent 10 includes receiving audio/video programs over a transport medium. The method includes receiving a plurality of ancillary information streams that are associated with the plurality of audio/video programs over a separate delivery mechanism. Announcements in the ancillary information streams are expected at a first location and indicate enhancement data as being transmitted. The method includes receiving a predetermined indication at the first location and tuning to one of the audio/video programs. The method includes identifying a location of the announcement of an ancillary information stream that is associated with the tuned audio/video program based on the predetermined location.

The Examiner fails to establish a *prima facie* case of obviousness for independent claim 10 for at least the reason that the Examiner fails to show where the prior art contains the alleged suggestion or motivation to modify Matthews in view of the ATVEF specification to derive the claimed invention.

More specifically, the Examiner contends that the hypertext links of Matthews are the alleged "announcements" of claim 10. The Examiner concedes that these alleged announcements do not indicate that enhancement data is being received. Therefore, the Examiner modifies Matthews in view of the ATVEF standard with the ATVEF specification's announcements so that the hypertext links of Matthews somehow indicate that enhancement data is being received. However, the Examiner is selectively modifying Matthews in view of the ATVEF specification without showing that one skilled in the art, *without knowledge of the claimed invention*, would have modified Matthews in view of the ATVEF specification to derive the claimed invention. In this regard, the Examiner has not shown where the prior art (i.e., either in Matthews or the ATVEF specification) contains the alleged suggestion or motivation to modify Matthews' program guide so that its hypertext links somehow indicate that enhancement data is being received. Without a showing of such a suggestion or motivation or even a reasoning of why this modification would have occurred with knowledge of the claimed invention, a *prima facie* case of obviousness has not been established for claim 10. Thus, for at least this reason, a *prima facie* case of obviousness has not been established for independent claim 10.

Claim 27 is patentable for at least the reason that this claim depends from an allowable independent claim.

Thus, for at least the reasons that are set forth above, the § 103(a) rejections of claims 10 and 27 are improper and should be reversed.

2. Can claims 15-18 and 29 be rendered obvious when the Examiner has failed to establish a *prima facie* case of obviousness for independent claim 15?

The system of independent claim 15 includes a first device that is adapted to receive audio/video content associated with a plurality of audio/video programs over a transport medium. The system includes a second device that is adapted to receive one or more special indicators and a stream of ancillary information portions that are associated with a plurality of audio/video programs over the separate delivery mechanism. The system includes a controller that is adapted to locate one or more ancillary information portions that are associated with the tuned audio/video program based on information in a special indicator that is identified with the tuned audio/video program. The ancillary information portions include announcements, and the special indicators include data that identifies locations of the one or more announcements. The announcements indicate that enhancement data is being transmitted.

The Examiner fails to establish a *prima facie* case of obviousness for independent claim 15 for at least the reason that the Examiner fails to show where the prior art contains the alleged suggestion or motivation to modify Matthews so that the hypertext links (the alleged "announcements") of Matthews indicate that enhancement data is being transmitted. Without such a showing, a *prima facie* case of obviousness has not been established for independent claim 15.

Claim 29 is patentable for at least the reason that this claim depends from an allowable claim.

Thus, for at least the reasons that are set forth above, the § 103(a) rejections of claims 15-18 and 29 should be reversed.

C. Can claims 8, 9 and 26 be rendered obvious under 35 U.S.C. § 103(a) as being unpatentable over Matthews in view of Smith and the ATVEF specification when the Examiner has failed to establish a *prima facie* case of obviousness for independent claim 8?

The system of independent claim 8 is capable of communicating audio/video content. The system includes a receiver that is adapted to tune to an audio/video portion over a transport medium, a device and a controller. The device is adapted to receive announcement data that is associated with the tuned audio/video content directed to a first location and to receive a special announcement directed to the first location. The specific announcement indicates availability of the announcement data that is associated with the tuned audio/video program and the announcement data that is associated with the tuned audio/video content indicating enhancement data is being transmitted. The controller is adapted to redirect the announcement data to a second location in response to the special announcement.

The Examiner rejects independent claim 8 under 35 U.S.C. § 103(a) as being unpatentable over Matthews in view of U.S. Patent No. 5,559,625 (herein called "Smith") and the ATVEF specification. However, as acknowledged by the Examiner, both Matthews and Smith fail to teach announcements that indicate enhancement data is being transmitted. Final Office, 12. Therefore, the Examiner relies on the modification of Matthews in view of the ATVEF specification to derive the claimed invention.

The Examiner fails to establish a *prima facie* case of obviousness for independent claim 8 for at least the reason that the Examiner fails to show where the prior art contains the alleged suggestion or motivation to modify Matthews to derive the claimed invention. Instead, the

Examiner arbitrarily labels the hypertext links of Matthews as the alleged announcements of claim 8 and then combines the ATVEF specification's discussion of "announcements" with Matthews to derive the claimed invention. However, the "announcements" of the ATVEF specification are not the same as the hypertext links of Matthews. In short, the Examiner has not shown why one skilled in the art, without knowledge of the claimed invention, would have modified Matthews so that the hypertext links of Matthews somehow indicate enhancement data as being received. Thus, without this showing, the Examiner has failed to establish a *prima facie* case of obviousness for independent claim 8.

Claims 9 and 26 are patentable for at least the reason that these claims depend from an allowable claim.

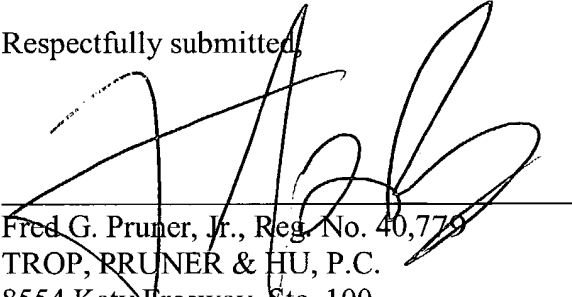
Thus, for at least the reasons that are set forth above, the § 103(a) rejections of claims 8, 9 and 26 are improper and should be reversed.

CONCLUSION

Applicant respectfully requests that each of the final rejections be reversed and that the claims subject to this Appeal be allowed to issue.

Respectfully submitted,

Date: October 4, 2004



Fred G. Pruner, Jr., Reg. No. 40,779
TROP, PRUNER & HU, P.C.
8554 Katy Freeway, Ste. 100
Houston, TX 77024
713/468-8880 [Phone]
713/468-8883 [Fax]

CLAIMS APPENDIX

The claims on appeal are:

1. A method of communicating television content and enhancement data including announcements, comprising:
 - receiving the television content associated with multiple television channels over a transport medium;
 - receiving enhancement data associated with the multiple television channels that have been multiplexed onto a separate delivery mechanism, announcements in the enhancement data being expected at a first location, and indicating at least some of the enhancement data is being transmitted;
 - receiving one or more special indications at the first location indicating that enhancement data is available on the separate delivery mechanism, the one or more special indications identifying locations of the announcements associated with the multiple television channels;
 - determining a location of an announcement based on a special indication associated with a currently tuned television channel; and
 - processing the announcement of the currently tuned television channel.
2. The method of claim 1, wherein the processing includes processing announcements according to an Advanced Television Enhancement Forum Specification.
3. The method of claim 1, wherein the one or more special indications are received on the separate delivery mechanism.

4. The method of claim 1, wherein receiving the enhancement data over the separate delivery mechanism includes receiving the enhancement data on a data-only transport stream program.

5. The method of claim 1, wherein receiving the enhancement data over the separate delivery mechanism includes receiving the enhancement over a separate communications link.

6. The method of claim 1, further comprising receiving the announcements at locations different from the first location.

7. The method of claim 6, wherein receiving the announcements includes receiving the announcements at an Internet Protocol address and port different from an expected announcement Internet Protocol address and port.

8. A system capable of communicating audio/video content, comprising:
a receiver adapted to tune to an audio/video portion over a transport medium;
a device adapted to receive announcement data associated with the tuned audio/video content directed to a first location and to receive a special announcement directed to the first location, the special announcement indicating availability of the announcement data associated with the tuned audio/video program and the announcement data associated with the tuned audio/video content indicating enhancement data is being transmitted; and
a controller adapted to redirect the announcement data to a second location in response to the special announcement.

9. The system of claim 8, wherein the second location includes an address and port for receiving announcements according to an Advanced Television Enhancement Forum Specification.

10. A method of communicating audio/video programs, comprising:
receiving the audio/video programs over a transport medium;
receiving a plurality of ancillary information streams associated with a plurality of audio/video programs over a separate delivery mechanism, announcements in the ancillary information streams being expected at a first location and indicating enhancement data is being transmitted;
receiving a predetermined indication at the first location;
tuning to one of the audio/video programs; and
identifying a location of the announcement of an ancillary information stream associated with the tuned audio/video program based on the predetermined indication.

11. A method of communicating audio/video content and enhancement data, comprising:
transmitting the audio/video content over a transport medium;
multiplexing enhancement data including announcements associated with multiple audio/video programs for transmission over a separate delivery mechanism, the announcements indicating at least some of the enhancement data is being transmitted; and
transmitting a predetermined indication over the separate delivery mechanism to a first location at which the announcements in the enhancement data are expected, the predetermined

indication being associated with one of the audio/video programs and identifying a location other than the first location of one or more announcements associated with the one audio/video program.

12. The method of claim 11, further comprising multicasting the enhancement data and predetermined indications to a plurality of receivers.

13. The method of claim 11, wherein the enhancement data is according to an Advanced Television Enhancement Forum Specification.

14. The method of claim 13, wherein the first location includes an IP address and port at which announcements are expected to arrive.

15. A system capable of receiving audio/video content over a transport medium and ancillary information over a separate delivery mechanism, comprising:

a first device adapted to receive the audio/video content associated with a plurality of audio/video programs over the transport medium;

a second device adapted to receive one or more special indicators and a stream of ancillary information portions associated with a plurality of audio/video programs over the separate delivery mechanism; and

a controller adapted to locate one or more ancillary information portions associated with the tuned audio/video program based on information in a special indicator identified with the tuned audio/video program,

wherein the ancillary information portions include announcements, and the special indicators include data identifying locations of the one or more announcements, the announcements indicating enhancement data is being transmitted.

16. The system of claim 15, wherein the ancillary information is according to an Advanced Television Enhancement Forum Specification.

17. The system of claim 16, wherein the announcements are expected at an announcement IP address and port.

18. The system of claim 15, wherein the first and second devices may include different parts of a software routine.

24. The method of claim 1, wherein the first location comprises a first network address and port, the method further comprising receiving the announcements at a second network address and port different from the first network address and port.

25. The method of claim 1, wherein receiving the one or more special indications at the first location comprises receiving the one or more special indications at a network address and port.

26. The system of claim 8, wherein the first location comprises a first network address and port and the second location comprises a second, different network address and port.

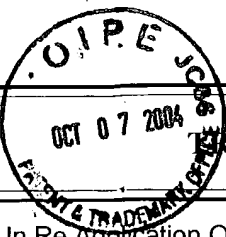
27. The method of claim 10, wherein receiving the predetermined indication at the first location comprises receiving the predetermined indication at a first network address and port, and

wherein identifying the location of the announcement comprises identifying a second, different network address and port.

28. The method of claim 11, wherein transmitting the predetermined indication to the first location comprises transmitting the predetermined indication to a first network address and port,

wherein the location other than the first location comprises a second, different network address and port.

29. The system of claim 15, wherein the locations identified by the special indicators comprise network addresses and ports.



AF 61

TRANSMITTAL OF APPEAL BRIEF (Large Entity)

Docket No.
ITL.0208US

In Re Application Of: Wayne J. Carr

Application No. 09/321,939	Filing Date 05/28/99	Examiner Jason P. Salce	Customer No. 21906	Group Art Unit 2611	Confirmation No. 7267
-------------------------------	-------------------------	----------------------------	-----------------------	------------------------	--------------------------

Invention: Communicating Ancillary Information Associated With A Plurality Of Audio/Video Programs

RECEIVED

OCT 13 2004

Technology Center 2600

COMMISSIONER FOR PATENTS:

Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed on

The fee for filing this Appeal Brief is: \$340.00

- ☒ A check in the amount of the fee is enclosed.
- ☐ The Director has already been authorized to charge fees in this application to a Deposit Account.
- ☒ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. 20-1504
- ☐ Payment by credit card. Form PTO-2038 is attached.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

Signature

Fred G. Pruner, Jr., Reg. No. 40,779
TROP, PRUNER & HU, P.C.
8554 Katy Freeway, Suite 100
Houston, Texas 77024
(713) 468-8880
(713) 468-8883 (fax)

Dated: October 4, 2004

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on

October 4, 2004

(Date)

Signature of Person Mailing Correspondence

Janice Munoz

Typed or Printed Name of Person Mailing Correspondence

CC: